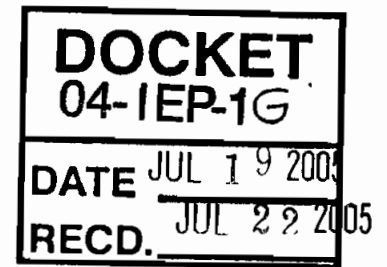


July 19, 2005

Mr. Terrance O'Brien  
Deputy Director, Systems Assessment and Facility Siting  
California Energy Commission  
State of California, Resources Agency  
1516 Ninth Street  
Sacramento, CA 95814



RE: **CEC-700-2005-015, Docket 04-IEP-1, "Assessment of Avian Mortality from Collisions and Electrocutions"**

Dear Mr. O'Brien:

I am writing to comment on the California Energy Commission's (CEC's) Systems Assessment and Facility Siting Department's proposed supplement, published on June 21, 2005, entitled "Assessment of Avian Mortality from Collisions and Electrocutions" (CEC-700-2005-015, supplement to **Docket No. 04-IEP-1**). This proposed supplement is intended to support the 2005 Environmental Performance Report and the 2005 Integrated Energy Policy Report (IEPR). It provides comments on avian fatalities associated with wind energy resources and with electrical transmission and distribution lines. This supplement is a compilation of comments, viewpoints, and various studies. It is of particular concern to the Sacramento Municipal Utility District (SMUD, or the District), because the proposed regulatory changes contained within CEC-700-2005-015 constitute significant ambiguous and paradoxical modifications to existing guidelines standardizing the current and future construction, siting, and monitoring actions of renewable wind power in California. The District respectfully submits the following comments regarding the CEC's supplement to the IEPR.

The District appreciates the CEC's existing work on renewable energy in California and its ongoing efforts, which are evident in the past and current IEPR. We disagree, however, with some of the conclusions drawn from this report with regard to avian mortalities within the Wind Resource Areas (WRAs) in California and with the conflicting way the conclusions were applied to both federal and state environmental laws and subsequent regulations. The following comments focus solely on Chapter 1 of the supplement, which is entitled "Avian Fatalities from Interactions with Wind Turbines."

- The supplement pairs admittedly obscure scientific facts with injudicious conclusions in regard to avian collisions with wind power turbines resulting in unlawful or non-permitted actions. Specifically, the document makes numerous references to avian fatalities resulting from wind turbines leading to legal action. The logic behind this premise is assumptive and based on one site-specific example in the Altamont Pass WRA. Logic dictates that litigation does not result in every case, and the document's assertion creates an inflammatory and inaccurate perception of the litigious nature of wind power and renewable energy projects. In addition, throughout the document, assertions are made that documented avian mortalities and ongoing monitoring in wind resource areas could delay permitting processes for the expansion of existing WRAs or the development of new sites. Again, this statement is based on a site-specific example; it does not apply to the entire state and has no definitive bearing on the outcome of future permit processes.

- The supplement is assumptive and does not substantiate many of its statements. With respect to providing inadequate verification of its conclusions, the document states, in its summary of findings and policy options, that “Most bird species killed by interaction with wind turbines...are protected by Federal and State laws and regulations.” However, the document also asserts that evidence for high avian mortality resulting from contact with wind turbines is “...insufficient, ...cannot be accurately quantified, ...and is not clearly understood.” These two separate statements in the document are dichotomous and inconclusive relative to a valid assessment of avian mortality associated with wind energy turbines. In addition, with the extensive ongoing efforts to monitor avian fatalities in California, deriving that conclusion is premature at this point in time. Proper evaluation of studies available to both the public and the CEC indicate that the mortality or injury of bird species protected under federal and state laws, as a result of contact with wind turbine infrastructure throughout California, vary extensively from site to site, depending on the behavioral pattern of the species and the habitat. This site-specific evaluation is not correctly identified in the document when comparing the fatality ratio to the number of listed and protected species. The document’s assessment gives the contextual impression that these types of fatalities are continuous statewide in all WRAs; however, the reported lack of concrete and protracted research on avian monitoring within other WRAs is inconclusive with respect to the valuation of protected species and cannot support an estimation of total fatalities, at present.
- The supplement incorrectly identifies guidance documents as the proper tool for use and implementation by the industry associated with the siting and surveying of a wind power turbine in an effort to avoid potential avian collisions. Specifically, the document cites guidance issued by the U.S. Fish and Wildlife Service (USFWS), referenced as “The ABC’s of Avoiding Bird Collisions at Communications Towers”(Manville, A.W., 2000), recommending that the industry follow a monitoring pattern suggested for suitable avian avoidance of wind power turbines. Guidance issued by the USFWS or any federal or state agency has a non-binding legal effect; it is more specifically designed to address unprecedented legal matters. Given the non-binding nature of guidance in any form, the suggestion offered in this document, that guidance form a basis for implementation, is inappropriate and should not be recommended in place of binding statutes (i.e., conditional use permits and existing laws currently regulating siting, surveying, and monitoring activities). In addition, the guidance issued by the USFWS (Manville, A.W., 2000), is specific to communications towers and their siting; it is not explicit to wind turbines, and is therefore inappropriate in the context of this document. In addition, the document references the protections offered under the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-712; 40 Stat.755, as amended by PL 86-732) on behalf of those bird fatalities occurring within the WRAs. Specifically, the document states, “...Under the Migratory Bird Treaty Act (MBTA), the U.S. Fish and Wildlife Service (USFWS) can take legal action if measures are not being implemented to reduce the impacts to all migratory birds, ...therefore, it (USFWS) established a protocol to conduct a site evaluation and wildlife use surveys for use in developing a site while reducing avian risk and wildlife impacts.” Given the reasons already stated, this statement is inappropriate because the statutory regulations governing activities under the MBTA differ from the non-binding nature of guidance documents.

- The supplement incorrectly draws the conclusion that avian mortality associated with wind energy turbines could be reduced by enhancing and increasing mitigation. All new projects in the state of California qualifying as a project under the California Environmental Quality Act (CEQA, Sections 15096.(g)) are statutorily required to perform mitigation for physical conditions that exist within the area affected by a proposed project. Therefore, all new projects, whether the expansion of an existing WRA or the development of a new one, will be subject to mitigation under CEQA. This statute also applies to existing wind resource projects that have been undergoing mitigation monitoring and reporting since permit issuance. Due to the statutory nature of mitigation under the CEQA, industry members, in consultation with Federal, State, and local agencies have worked collaboratively to come to agreements on area-specific mitigation monitoring plans. The document fails to mention existing mitigation measures that wind turbine power owners and operators have been required to implement. With the exception of the Altamont Pass WRA, the document does not take into account existing mitigation measures, monitoring, and reporting currently underway throughout California's WRAs. To properly evaluate the extent that enhanced mitigation could aid in decreasing avian mortality associated with wind energy turbines, a thorough evaluation of these existing measures ought to have been conducted.
- The document improperly places mitigation monitoring authority under the auspices of the California Energy Commission (CEC). Under CEQA guidelines (CEQA, Sections 15097.(a)) , the responsibility of mitigation monitoring measures are held by the Lead Agency applicable when findings have been made and required under paragraph (1) of subdivision (a) of Section 15091 relative to an issued or permitted EIR or adopted mitigation monitoring plan in conjunction with approving a project. The Lead Agency is additionally charged with the primary responsibility of protecting the species affected by wind energy turbine projects, according to further CEQA guidelines (CEQA, Sections 15097.(c)(2)). For these reasons, the District believes that mitigation measures and the evaluation thereof ought to be assessed by the lead and responsible agencies whose mission it is to steward those species affected to determine the measures' effectiveness in protecting sensitive groups. The District considers the recommendation by the CEC in this supplement to enhance existing mitigation measures inappropriate given the Commission's mission and that any recommendation to do so must be based on sound scientific evidence coupled with specialized appropriate agency experience; not conjecture largely based on assumptions.

In conclusion, the District respectfully agrees with the Commission that there is a strong and pressing need to minimize the impact that wind energy turbines have on avian species. We support the continuing efforts by the CEC to sponsor scientific studies that will augment existing efforts to increase our understanding of avian interactions with wind energy turbines. We recommend that these studies be conducted with continuing industry input and performed in a systematic way aimed to close existing data gaps.

Thank you for the opportunity to comment on this topic of critical importance to the future of wind resource energy development.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Scott", with a stylized flourish extending from the end.

Ron Scott  
Safety, Health, and Environmental Specialist III  
Sacramento Municipal Utility District